**PENNSYLVANIA**

**PUBLIC UTLIITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held December 19, 2013

Commissioners Present:

 Robert F. Powelson, Chairman, Statement

 John F. Coleman, Jr., Vice Chairman

 James H. Cawley

 Pamela A. Witmer

 Gladys M. Brown

Pennsylvania Public Utility Commission R-2013-2355276

Office of Consumer Advocate C-2013-2362470

Office of Small Business Advocate C-2013-2364641

Brian L. Casper C-2013-2364664

Dawn B. Spielvogel C-2013-2364692

Robert Redinger C-2013-2364773

Rita Sherman C-2013-2366095

Guy & Nedra Visconti C-2013-2367036

Russell Vankoughnet C-2013-2367041

Doris Miller C-2013-2369063

Jon & Dorothy Pichelman C-2013-2369095

Jane Neufeld C-2013-2369464

Georgia L. Dicko C-2013-2369925

Carly J. Dunn C-2013-2370649

William B. Kazimer C-2013-2372396

S. Stockton Alloway C-2013-2366239

Thad Shirey C-2013-2372641

Paul Trizonis C-2013-2379466

 v.

Pennsylvania-American Water Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

 Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Pittsburgh Water and Sewer Authority (PWSA), an intervening party, and Formal Complainant William B. Kazimer (Mr. Kazimer), filed on November 18, 2013, to the Recommended Decision (R.D.) of Administrative Law Judges (ALJs) Angela T. Jones and Darlene D. Heep, issued on November 8, 2013, in which the ALJs recommended approval of the Joint Petition for Settlement of Rate Investigation (Settlement).[[1]](#footnote-2) On November 26, 2013, Pennsylvania-American Water Company (PAWC or the Company) filed Replies to Exceptions.

**I. History of the Proceeding[[2]](#footnote-3)**

On April 30, 2013, the Company filed with the Commission Supplement No. 279 to Tariff Water – Pa. P.U.C. No. 4 and Original Tariff Wastewater Pa. P.U.C. No. 15 providing for an increase in water and wastewater rates based on a net operating revenue increase of $58.6 million or approximately 10.1% over the pro forma present annual rates of $578.6 million. The tariffs were to become effective on June 29, 2013.

By Order entered June 13, 2013, the Commission suspended the effective date of the tariffs until January 29, 2014, or until the Commission rules otherwise. In addition, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of PAWC’s existing and proposed rates, rules and regulations.

 The case was assigned to ALJs Jones and Heep for the prompt scheduling of hearings and for the issuance of a Recommended Decision. The Commission received seventeen Formal Complaints. On June 27, 2013, ALJ Jones convened a Prehearing Conference. The following Parties were present and/or participated telephonically in the Prehearing Conference: PAWC; the Commission’s Bureau of Investigation and Enforcement (I&E); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); United States Steel Corporation (US Steel); the Commission on Economic Opportunity (CEO); PWSA; Doris Miller, *pro se* Complainant; and Jane Neufeld, *pro se* Complainant.[[3]](#footnote-4) The above listed Parties were active participants. All the other Complainants were inactive participants as defined in Prehearing Conference Order #3 dated July 2, 2013.

 During the Prehearing Conference, a schedule was set for public input hearings and formal testimony by the Parties. The first public input hearing was held on July 22, 2013, in Pittsburgh at the Shaler Vista Volunteer Fire Department. On July 23, 2013, a second public input hearing was held in Washington, Pennsylvania at the Washington County Fair and Expo Center. The third public input hearing was held on July 31, 2013, in Camp Hill, Pennsylvania at the Camp Hill Borough Building. The fourth public input hearing was held on August 6, 2013, in Scranton, Pennsylvania at the Scranton State Office Building. The fifth public input hearing was held at the Stroudsburg Area School District Auditorium in Stroudsburg, Pennsylvania. On August 7, 2013, a sixth public input hearing was held in the Exeter Community Library in Reading, Pennsylvania. The seventh and final public input hearing was held on August 8, 2013, in the East Fallowfield Township Building in West Chester, Pennsylvania.

 On September 16, 2013, the Parties represented by counsel notified the ALJs that a settlement in principle had been reached. On October 18, 2013, the following Parties filed the Settlement: PAWC, I&E, OCA, OSBA, CEO and PAWLUG (Joint Petitioners). Also on October 18, 2013, PWSA and *pro se* Complainants Neufeld and Miller submitted statements of non-opposition to the Settlement. On October 24, 2013, US Steel filed a letter of non-opposition to the Settlement.

 The non-signatory, inactive Parties were also notified of the proposed Settlement by a letter from the OCA. In that letter, the Parties were notified that access to the Joint Settlement was available through an internet website. The letter also provided a form through which the Parties could indicate whether they accepted the Settlement, opposed the Settlement or had no position.

 Dawn Spielvogel, an inactive participant, supported the Settlement. The following parties chose to oppose the Settlement: S. Stockton Alloway, Mr. Kazimer, and Thad Shirey.

 The record was closed on October 28, 2013.

In their Recommended Decision, issued on November 8, 2013, the ALJs found, *inter alia*, that the Settlement submitted by the Joint Parties is just and reasonable and should be approved. The ALJs further found that, upon the Commission’s approval of the Settlement, the Company will receive a stipulated increase in annual revenues of $26 million, in lieu of the Company’s original base rate increase request of $58.6 million, which will produce approximately $604.6 million in total annual combined water and wastewater revenue. R.D. at 48-49.

Exceptions to the Recommended Decision were filed as above noted. For the reasons stated below, we shall deny PWSA’s Exceptions, in part, and grant them in part; deny Mr. Kazimer’s Exceptions; approve the Settlement; and adopt the ALJs’ Recommended Decision, as modified, consistent with this Opinion and Order.

## Description of the Company

PAWC is an investor-owned company and a subsidiary of American Water Works Company, Inc.

The Company provides water service to over 641,000 customers. It serves all or portions of the following thirty-six counties: Adams, Allegheny, Armstrong, Beaver, Berks, Bucks, Butler, Centre, Chester, Clarion, Clearfield, Clinton, Columbia, Cumberland, Dauphin, Fayette, Indiana, Jefferson, Lackawanna, Lancaster, Lawrence, Lebanon, Luzerne, McKean, Monroe, Montgomery, Northampton, Northumberland, Pike, Schuylkill, Susquehanna, Union, Washington, Warren, Wayne and York. In addition, PAWC provides wastewater service to the following counties totaling over 17,000 customers: Chester, Clarion, Monroe, Pike and Washington.

1. **Discussion**

1. **Public Input Hearings**

 The dates and locations of the public input hearings have been described above. A sampling of the testimony is provided below.[[4]](#footnote-5)

 Some testimony concerned requests for PAWC to extend water service to various communities. For example, Ms. Elizabeth Cowden, a supervisor in Cecil Township in Washington County, testified that her community is growing fast and many areas are without water service but would like to receive public water service. She also testified that many private wells are contaminated. Tr. at 80-85.

 In addition, some witnesses challenged the rate increase, particularly the shifting of a portion of the wastewater cost of service to the entire customer base. For example, Mr. Phillip B. Volmer explained that the Borough of Camp Hill operates the sewer system in his community and PAWC is not involved with such service. He objected to paying for a sewer system for others while continuing to pay a sewer bill to his borough. Tr. at 220-221.

Representatives Kevin Haggerty of the 112th District in Pennsylvania and Martin Flynn of the 113th District expressed concerns about the impact on families which have some of the lowest incomes in the state and are least able to afford the proposed rate increase. Furthermore, Representative Flynn noted that, based on public reports of the Company’s profits, PAWC could pay for necessary infrastructure improvements using other capital methods such as utilizing the increased profits of the Company. Tr. at 248-254.[[5]](#footnote-6)

 Mr. Thomas Gombar, District Director for State Senator Judy Schwank, introduced written remarks on behalf of Senator Schwank. In her written comments, Senator Schwank stated that PAWC was granted a rate increase only two years ago and expressed concerns about the impact of the requested increase on senior citizens and persons on fixed incomes. She also asserted that the increase will put small businesses at a competitive disadvantage. Tr. at 351-352.

 Additional testimony pertained to requests for clarification of the increase. Formal Complainant Jane Neufeld acknowledged that PAWC had purchased the previous water supplier and made improvements to the prior system and that a rate increase was to be expected. However, she noted that one rate is not appropriate for all communities, explaining that the consolidation of different areas of Pennsylvania into fewer payment zones would cause some people to experience significant monthly rate increases. Tr. at 318-328.

 Some witnesses spoke of civic organizations’ support for the Company, while others expressed concerns about odor, discolored water, and customer and communications problems. For example, State Senator Andrew Dinniman testified that there are problems with odor from PAWC facilities and the water provided is often discolored. Tr. at 421-423.

 In addition, Senator Dinniman asserted that residents in his district have already paid significant increases in their water rates, maintaining that PAWC is seeking a rate sixty-two percent higher than the rate charged rate in 2007. Furthermore, Senator Dinniman asked for assurance that a $9.9 million low-interest loan PAWC received form the Pennsylvania Infrastructure Investment Authority to upgrade the Rock Run water treatment center is taken into consideration when determining the rate. Finally, Senator Dinniman stated that he considered the eleven percent overall rate of return to be too high and maintained that an expected or traditional rate of return is about 8.68%. Accordingly, he calculated that the difference in the expected and traditional rates is equal to $47 million, which could be used to reduce water and wastewater bills. Tr. 419-421.

**B.** **Terms and Conditions of the Joint Settlement**

The Joint Petitioners agree to the following pertinent terms and conditions regarding PAWC’s proposed rate increase as reflected in Paragraph No. 8 of the Settlement:

* + 1. Upon the Commission’s approval of this Settlement, but no earlier than January 1, 2014 (see 8.d. below), PAWC will be permitted to charge the rates for water service set forth in the proposed Tariff Supplement annexed hereto as Appendix A and the rates for wastewater service set forth in the proposed Original Tariff annexed hereto as Appendix B (hereafter, the Settlement Rates).[[6]](#footnote-7) The Settlement Rates are designed to produce additional annual operating revenue of $26 million, as shown on the proof of revenues annexed hereto as Appendix C. The Water Tariff Supplement set forth in Appendix A and the Wastewater Original Tariff set forth in Appendix B have been reviewed by the Joint Petitioners and comply with the terms of the Settlement. The Settlement Rates are designed to produce approximately $604.6 million in total annual combined water and wastewater revenue (including Other Revenue) as shown in Appendix C, Schedule A, column 8.
		2. The Joint Petitioners agree that the Company’s originally filed pro forma present rate revenue level has been used to establish the Settlement Rates. The Joint Petitioners specifically agree that this provision is for the purposes of settlement for this case only and is not determinative of any party’s position in future cases.
		3. The Commission previously approved wastewater rate increases to become effective on January 1, 2011, 2012, 2013, and 2014 for the Company’s Coatesville wastewater operations (Docket No. R-2010-2166212), Claysville wastewater operations (Docket No.
		R-2010-2166210) and Northeast wastewater operations (Docket No. R-2010-2166214), as part of a rate phase-in. The rates to become effective on January 1, 2014 were to remain in effect through the years 2014, 2015, and 2016. On January 1, 2017, the aforementioned wastewater rates were to be reduced to those in effect on January 1, 2013. As a result of the combination of the water and wastewater revenue requirements reflected in the Settlement, water customers will be allocated $7.8 million of the deferred increases to the Coatesville, Claysville and Northeast wastewater customers, to be recovered by an increase in the water revenue requirement of $2.6 million per year in each of the years 2014, 2015, and 2016. On January 1, 2017, Zone 1 water rates will be reduced by the following amounts to remove that $2.6 million from rates: (i) $0.0073 per 100 gallons for the Residential customer class; (2) $0.0035 per 100 gallons for the Commercial customer class; and (3) $0.0054 per 100 gallons for the Other Public Authority customer class. Additionally, as part of this Settlement, the previously-approved wastewater rate increases noted in this subsection scheduled to take effect on January 1, 2014 for Coatesville, Claysville and Northeast will not occur.
		4. The Joint Petitioners agree to exercise their best efforts to obtain approval of this Settlement by the Commission on or before December 19, 2013, and the implementation of the Settlement Rates on January 1, 2014. Upon the entry of a Commission Order approving this [Settlement], the Company will be permitted to file a tariff supplement for water service, in the form attached hereto as Appendix A, and a tariff for wastewater service, in the form attached hereto as Appendix B, to become effective upon less than statutory notice on January 1, 2014.
		5. PAWC will not file for another general rate increase under Section 1308(d) of the Public Utility Code for its water operations, Pocono wastewater operations, Clarion wastewater operations or Clean Treatment wastewater operations prior to March 31, 2016.[[7]](#footnote-8) However, if a legislative body or administrative agency, including the Commission, orders or enacts fundamental changes in policy or statutes which directly and substantially affect the Company’s rates, this Settlement shall not prevent the Company from filing tariffs or tariff supplements to the extent necessitated by such action.
		6. The Joint Petitioners acknowledge and agree that the Company will use the depreciation rates set forth in PAWC Exhibit Nos. 10-C, 10-F and 10-I to calculate the depreciation expense it records on its regulated books of account. This provision is included solely for the purpose of recording annual and accrued depreciation in PAWC’s regulated books of account and is not determinative of depreciation rates or depreciation expense for future ratemaking purposes.
		7. The Joint Petitioners agree that the Settlement Rates reflect the amortizations set forth in Appendix D to the [Settlement], which includes amortizations of the acquisition adjustments that PAWC recorded in connection with its acquisition of the water utility assets of the Lake Spangenberg Water Company, Ha Ra Corporation (Fernwood Community Water System), Olwen Heights Water Service Company, Inc., North Fayette County Municipal Authority, Wildcat Park Corporation and Indian Rocks Property Owners Association, Inc. The parties agree that a ten (10) year amortization period shall be employed for settlement purposes. All parties retain their right to review and make recommendations regarding ratemaking treatment to be accorded the Company’s pending acquisition of the Paint Township Municipal Water Authority in PAWC’s next base rate proceeding.
		8. As part of the comprehensive Settlement of this case, the Joint Petitioners agree that, for purposes of determining the revenue requirement in this case, all capitalized repairs deductions claimed on a tax return have been normalized for ratemaking purposes and the appropriate related amount of tax effect of those deductions has been reflected as Accumulated Deferred Income Taxes as a reduction to PAWC’s rate base.
		9. The low income customer charge discount for water customers will be increased from 65% to 80%, as reflected in the Settlement Rates.
		10. The Company’s annual contribution to its hardship grant program will be increased from its current level of $250,000 to $300,000 and, in accordance with current practice, such contribution will be recorded as a “below the line” expense and will not be claimed by PAWC for recovery in its rates. This term of the Settlement is set forth for information purposes, and the Commission’s approval of this term is not requested.
		11. With regard to service-related issues and concerns expressed at the public input hearings held in Exeter Township (Reading) and East Fallowfield Township (Coatesville):
			1. The Company has already taken the action summarized in Appendix E-1 annexed hereto with respect to the single service-related concern expressed at the Exeter Township (Reading) public input hearing;
			2. The Company has already taken the action summarized in Appendix E-2 annexed hereto with respect to service-related issues and concerns expressed at the East Fallowfield Township (Coatesville) public input hearing and agrees to take such appropriate further action as summarized in Appendix E-3;
			3. The Company agrees to conduct semi-annual information sessions for customers of its Coatesville water and wastewater operations, in the manner more fully set forth in Appendix E-3 annexed hereto.

l) The Company agrees to invest $10 million to construct water main extensions under and pursuant to Rule 27.1(F) of its water tariff, which authorizes main extensions to be installed without customer contributions subject to Commission approval in order to address health and safety concerns. The Company’s investment will be used to install the water main extensions identified in Appendix F annexed hereto. If the $10 million investment to which the Company is committing is not fully expended on the aforementioned main extensions, the Company will work with the OCA and other interested parties to identify such additional main extensions in Washington County that satisfy the criteria of Tariff Rule 27.1(F) and will use such remaining committed investment to construct such main extensions under and pursuant to Tariff Rule 27.1. With respect to the foregoing commitments, the following terms and conditions also apply:

* + - 1. The Company and the OCA will work together to establish a reasonable timeframe for the completion of the projects that are within the scope of the Company’s committed investment once the specifications for such projects are known;
			2. The Company shall apply least-cost principles in designing and constructing the main extensions that are within the scope of its commitments in this Settlement;
			3. The Commission’s approval of this [Settlement] Petition will constitute the approval required under Tariff Rule 27.1(F) to construct the projects identified in Appendix F. Based upon the Commission’s approval of the construction of the main extensions identified in Appendix F, the Joint Petitioners agree not to contest the inclusion in rate base of the capital costs associated with the construction of those extensions.
			4. PAWC agrees to continue to use its best efforts to apply for grants from applicable local municipalities and to receive contributions from other sources, such as from Marcellus Shale drilling companies, in order to mitigate the cost for the main extension projects identified in Appendix F. To the extent any grants are received, they will not diminish the Company’s commitment to invest $10 million for main extensions that meet the criteria of Tariff Rule 27.1(F) but, instead, will enable the Company to fund additional projects under Tariff Rule 27.1(F).
			5. The Joint Petitioners agree that the provisions set forth in this subparagraph l. and Appendix F are not precedential as to conditions that might validate the application of Tariff Rule 27.1(F) in the future and shall not be cited as such in any subsequent proceeding.
1. The Company agrees to work with I&E, OCA and OSBA to refine its existing process for systematic evaluation of main extension requests to ameliorate, by the application of Tariff Rule 27.1(F), documented health and safety problems that exist within its service territory because of the inadequate quantity or quality of property owners’ individual well water supplies.
2. As part of this Settlement, the Company has agreed to provide the Commission’s Bureau of Technical Utility Services (“TUS”), the I&E, OCA and OSBA, on or before April 30, 2014, an update to PAWC Exhibit No. 3-C, pages 3-10, which will include actual plant additions and retirements by month for the twelve months ending December 31, 2013. On or before October 31, 2014, PAWC will update Exhibit No. 3-C, page 3-10 for the twelve months ending June 30, 2014. In PAWC’s next base rate proceeding, the Company will prepare and submit a comparison of its actual expenses and rate base additions for the twelve months ended December 31, 2014 to its projections in this case. However, it is recognized by the Joint Petitioners that this is a black box settlement that is a compromise of the Joint Petitioners’ positions on various issues.
3. The Company will not implement a Distribution System Improvement Charge (DSIC) during the calendar year ending December 31, 2014. The first DSIC in 2015 will be effective no earlier than April 1, 2015 based on DSIC-eligible expenditures during January and February 2015. In any event, the Company will not begin to impose a DSIC until the balances of DSIC-eligible accounts, net of plant funded with customer advances and customer contributions, exceed the December 31, 2014 levels of investment in plant additions projected by PAWC in this case. This provision relates solely to the calculation of DSIC during the time that the Settlement Rates are in effect and is not determinative for future ratemaking purposes of the projected plant additions to be included in rate base in a fully projected future test year filing.
4. The Settlement Rates set forth in Appendix A reflect the Joint Petitioners’ agreement with regard to water rate structure, rate design and the distribution of the increase in revenues in this case, as follows:[[8]](#footnote-9)
	* + 1. The Rate Zone 1 5/8-inch customer charge for all customer classes except Industrial and Other Water Utilities will be $15.00 per month. The same percentage increase as that for 5/8 inch meters will be applied to the customer charges for all other meter sizes and classes of customers in Rate Zone 1.
			2. Rate Zones 36, 43, 45, 48 and 49 are being consolidated with Rate Zone 1 under the Settlement Rates.
			3. For Rate Zone 40, the OCA’s proposal as set forth in OCA Statement No. 3 (page 34) has been adopted with one modification, which establishes a consumption charge of $0.5350 per hundred gallons.
			4. For Rate Zone 41, the customer charges have been equalized with Rate Zone 1 and the residential usage charge will be $0.7100 per 100 gallons.
			5. For Rate Zone 44, the OCA’s proposal as set forth in OCA Statement No. 3 (pages 36-37) has been adopted.
			6. For Rate Zone 46 Winter, the I&E’s proposal as set forth in I&E Statement No. 4 (pages 53-55) has been adopted with one modification, which establishes a consumption charge of $0.7100 per hundred gallons after meters are installed.
			7. For Rate Zone 46 Summer, the I&E’s proposal as set forth in I&E Statement No. 4 (pages 53-55) has been adopted with one modification, which establishes a consumption charge of $0.7100 per hundred gallons after meters are installed.
			8. For Rate Zone 47, the customer charges have been equalized with Rate Zone 1. The residential usage charge for the first usage block will be $0.6200 per 100 gallons. The residential usage charge for the second usage block will be $0.5000 per 100 gallons.
5. The Settlement Rates set forth in Appendix B reflect the Joint Petitioners’ agreement with regard to wastewater rate structure, rate design and the distribution of the increase in revenues in this case. A description of the impact of the Settlement Rates on an average Residential class customer in each of the Company’s wastewater operations is set forth below.[[9]](#footnote-10)
	* + 1. **Coatesville**: Under the Settlement Rates, an average residential customer’s monthly bill will decrease by 13.3% to $58.50. There will be no change in the existing rates for the Commercial, Industrial and Municipal customer classes.[[10]](#footnote-11)
			2. **Claysville**: Under the Settlement Rates, an average residential customer’s monthly bill will decrease by 36.0% to $58.50. The rates for the Commercial and Municipal customer classes will be the same as the existing Coatesville wastewater operation’s rates for those classes. (There are no Industrial customers on the Claysville wastewater system.)
			3. **Northeast**: Under the Settlement Rates, an average residential customer’s monthly bill will remain at $58.50 because the Settlement Rates are the same as the existing rates for Northeast.
			4. **Clarion**: The Company’s proposed rates as set forth on PAWC Exhibit No. 11-B, Schedule 14, are the Settlement Rates. The Settlement Rates will result in an average residential customer monthly bill of $47.63, or an increase over existing rates of 36.9%.
			5. **Pocono**: Customers will be converted from flat rates to metered rates. The Settlement Rates for Pocono are the same as the Settlement Rates for Clarion. An average residential customer’s monthly bill will decrease by 6.6% to $47.63.
			6. **Clean Treatment**: An average residential customer’s monthly bill will decrease by 13.97% to $58.50. The rates for the Commercial customer class will be the same as the existing Coatesville wastewater operation’s rates for that class. (There are no Municipal or Industrial customers on the Clean Treatment wastewater system.)
			7. **Combined Water and Wastewater Revenue Requirement**: Pursuant to Section 1311(c) of the Public Utility Code and the Commission’s Implementation Order in Docket No. R-2013-23565276, under the Settlement Rates a portion of the wastewater revenue requirement totaling $5,411,134 is being allocated to water customers, as shown in Appendix G (*see* column 10, line 34).

We note that Paragraph No. 8 of the Settlement does not provide an average increase in the water rates for each zone of service. Upon review of the revenue schedules attached to the Settlement, we provide the following summary of the possible impact on residential water service customers:

|  |
| --- |
| **Comparison of Monthly Residential Bills at Present and Settlement Rates** |
| 5/8 Inch Meter |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| Zone | Typical Consumption  | Present Rates | Settlement Rates | Increase |
|   |  |   |   | Amount | Percent |
| Zone 1 - PWAC\* | 3,960 |  $52.52 | $55.45 | $2.93 | 5.58% |
| Zone 40 - Nittany | 3,960 | $23.84 | $32.69 | $8.85 | 37.12% |
| Zone 41 - Sutton Hills\* | 3,960 | $31.21 | $43.12 | $11.91 |  38.16% |
| Zone 43 - Acquisitions\* | 3,960 | $46.66 | $55.45 | $8.79 | 18.84% |
| Zone 44 - Wildcat | 3,960 | $45.94 | $49.79 | $3.85 | 8.38% |
| Zone 45 - Lake Spangenberg | 3,960 | $47.07 | $55.45 | $8.38 | 17.80% |
| Zone 47 - Balsinger | 3,960 | $28.40 | $39.55 | $11.15 | 39.26% |
| Zone 48 - All Seasons (Winter) | 3,960 | $27.50 | $41.87 | $14.37 | 52.25% |
| Zone 48 - All Seasons (Summer) | 3,960 | $18.33 | $41.87 | $23.54 | 128.42% |
| Zone 48 - Springfield | 3,960 | $46.22 | $55.45 | $9.23 | 19.97% |
| Zone 49 - Olwen Heights | 3,960 | $44.10 | $55.45 | $11.35 | 25.74% |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| \* Present Rates include 5.82% DSIC and -0.15% State Tax Assessment Surcharge. |  |
|  |  |  |  |  |  |
| Settlement, Appendix C, Schedule 9, at 1-11. |  |  |  |  |

### C. Applicable Law

 The purpose of this investigation is to establish rates for PAWC customers which are “just and reasonable” pursuant to Section 1301 of the Public Utility Code (Code), 66 Pa. C.S. § 1301. This Commission possesses a great deal of flexibility in the ratemaking function.

In determining just and reasonable rates, the [Commission] has discretion to determine the proper balance between interests of ratepayers and utilities. [*Pennsylvania Public Utility Commission v. Philadelphia Electric Co.*, 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1989108734&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)). As this Court stated in [*Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980194813&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)#co_pp_sp_162_1219), cert. denied, [454 U.S. 824, 102 S.Ct. 112, 70 L.Ed.2d 97 (1981)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&pubNum=708&cite=102SCT112&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)),

There is ample authority for the proposition that the power to fix “just and reasonable” rates imports a flexibility in the exercise of a complicated regulatory function by a specialized decision-making body and that the term “just and reasonable” was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy concerning the appropriate balance between prices charged to utility customers and returns on capital to utility investors consonant with constitutional protections applicable to both.

[*Popowsky v. Pa. PUC*, 542 Pa. 99, 108, 665 A.2d 808, 812 (1995)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1995190393&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Keycite)).

 Commission policy promotes settlements, 52 Pa. Code §§ 5.231 and 69.401. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

 In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004).

Section 315(a) of the Code reads as follows:

§ 315. Burden of proof

(a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public  utility. The commission shall give to the hearing and decision of any such proceeding preference over all other proceedings, and decide the same as speedily as possible.

66 Pa. C.S. § 315(a). Consequently in this proceeding, PAWC has the burden to prove that the rate increase it has proposed through the Settlement is just and reasonable. The Joint Petitioners have reached an accord on the issues and claims that arose in this proceeding and submitted a Settlement for Commission review. In reviewing the Settlement, the question which must be answered is whether it is in the public interest. The Joint Petitioners have the burden to prove that the Settlement is in the public interest.

 Before addressing the Exceptions, we note that any issue or Exception that we do not specifically address shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. [*Consolidated Rail Corp. v. Pa. PUC,* 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also see, generally,* [*University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**D. Public Interest Considerations**

 The Joint Petitioners attached Statements of Support to the Settlement setting forth the bases upon which they believe that the Settlement is fair, just, reasonable, non-discriminatory, lawful and in the public interest. Settlement at 15. In particular, the Joint Petitioners argue that the Settlement is in the public interest for the following four reasons. First, the Settlement provides for an increase in annual operating revenue of $26 million, or 4.5%, which is lower than the originally requested increase of $58.6 million, or 10.1%. Second, approval of the Settlement will avoid the need for further administrative proceedings and possibly appellate proceedings at significant cost to the Joint Petitioners, other parties, and the Company’s customers. Third, the

Settlement Rates will allocate the agreed-upon combined water and wastewater revenue requirement to each rate zone and customer class in a reasonable manner considering the positions of the Parties regarding rate structure and cost. Fourth, the Settlement implements Section 1311(c) of the Code, 66 Pa. C.S. § 1311(c), in a fair manner to all customers.[[11]](#footnote-12) According to the Joint Petitioners, the Settlement avoids wastewater increases scheduled for January 1, 2014, and results in wastewater rates that are substantially lower than they would have been under stand-alone wastewater requirement calculations.[[12]](#footnote-13) Settlement at 15.

 With regard to Section 1311(c), PAWC, I&E, and OCA each argue that it is in the public interest to allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base. According to PAWC, the effect of this allocation would be to moderate the rates of wastewater customers while only having a negligible impact on the rates of customers. PAWC Statement in Support of the Settlement at 2.

 I&E notes that, without the Settlement, customers in the Coatesville, Claysville, and Northeast wastewater service territories are going to experience significant rate increases in 2014-2016. I&E Statement in Support of Settlement at 9. For example, the average residential customer in the Coatesville territory, currently paying $67.50 per month for wastewater service, will pay $81.27 on January 1, 2014, for the same service. *Id.* I&E supports the Settlement, which will eliminate the January 2014 rate increases for the Coatesville, Claysville, and Northeast wastewater divisions by adding the deferred wastewater catch-up revenue to the water revenue requirement. According to I&E, the Settlement is in the public interest as mandated by Act 11 because it significantly moderates the rate impact of the investments needed in the wastewater divisions in a way that is reasonable for PAWC water customers. *Id.* at 9-10, 19-22.

 OCA also agrees that the combination of the water and wastewater rate base in the Settlement is in the public interest as required under Act 11. OCA Statement in Support of Settlement at 6-7.

 **E. Exceptions, Replies and Disposition**

1. **Exceptions of PWSA**

 As noted above, PWSA filed a statement of non-opposition to the Joint Settlement on October 18, 2013. PWSA’s statement provided, in part, that it “does not oppose the proposed allocation of $5.4 million of wastewater revenue to water customers as identified [in the Settlement].” PWSA Statement of Non-Opposition (PWSA Statement) at 2-3. In their Recommended Decision, the ALJs considered the PWSA Statement to be “compelling” and concluded that PWSA found the resolution to pay a portion of wastewater service costs in water service rates as “palatable.” R.D. at 41.[[13]](#footnote-14)

In its first Exception, PWSA stated that it was incorrect for the ALJs to characterize its non-opposition as “compelling” in support of the Settlement or for any other purpose. Further, PWSA argues that it was incorrect to view the PWSA Statement as a finding that PWSA considers the payment of wastewater service costs through water rates to be “palatable.” According to PWSA, its position in regard to the settlement revenue terms and the allocation of wastewater costs to water rates is simply one of non-opposition and it objects to any other characterization of its position. PWSA Exc. at 2-3.

 In its Replies to the Exceptions, PAWC considers PWSA’s first Exception to be limited in nature and, if granted, will have no effect on the PWSA. R. Exc. at 5-6.

 We do not believe the ALJs committed error by concluding that the PWSA Statement was compelling in terms of the disposition of the Settlement. First, PWSA does not provide a rationale for its objections. Second, as properly noted by the ALJs, many customers in the public input hearings testified that it was improper and not in the public interest to require water-only customers to pay for part of the wastewater service supplied to others. R.D. at 43. However, active participants in the proceeding, which included organizations representing the public interest, had the opportunity to raise similar concerns or objections but declined to do so. Accordingly, we agree that the PWSA Statement as to this issue was influential for purposes of evaluating whether the Settlement is in the public interest and the ALJs acted within their discretion by giving weight to PWSA’s filing. Moreover, we find no error in the ALJs conclusion that PWSA considered the Settlement to be “palatable.”[[14]](#footnote-15) It is fair to conclude that, if PWSA considered the Settlement to be unacceptable, it would have refrained from submitting its statement of non-opposition. Therefore, we shall deny PWSA’s first Exception.

 In its second Exception, PWSA objects to being identified as an “industrial customer” of PAWC on page 41 of the Recommended Decision. PWSA avers that it intervened in the proceeding, not as a customer, but to minimize equalization payments made by PWSA for the benefit of PAWC water customers who reside in Pittsburgh’s South Hills area. According to PWSA, it would be incorrect to identify PWSA as an industrial customer in any final order by the Commission. PWSA Exc. at 3.

 In its Replies to the Exceptions, PAWC agrees that PWSA is not an industrial customer of PAWC. Further, PAWC notes that PWSA is correct in asserting that its pleadings, testimony and statement of non-opposition averred that its intervention was based on its claimed interest in PAWC’s rates allegedly arising from equalization payments it makes on behalf of Pittsburgh residents who are PAWC customers. As such, PAWC believes the granting of PWSA’s second Exception would create no barrier to the Commission’s approval of the Settlement. R. Exc. at 6.

 Upon review, we agree with PWSA and PAWC that the ALJs’ characterization of PWSA as an industrial customer is inconsistent with PWSA’s filing regarding the circumstances of PWSA’s intervention in this proceeding. In order to clarify the record, we shall grant PWSA’s second Exception. Accordingly, we shall modify the Recommended Decision to remove reference to PWSA as an industrial customer of PAWC.

1. **Exceptions of Mr. Kazimer**

Mr. Kazimer raises two objections in his Exceptions to the Recommended Decision.[[15]](#footnote-16) First, he argues that “Act 11, 66 Pa. C.S. § 1311(c)” is unconstitutional, unfair, discriminatory and unreasonable. He claims that he already pays his township for wastewater and sewage disposal and that PAWC is not entitled to the Settlement.[[16]](#footnote-17) Second, Mr. Kazimer asserts that the ALJs did not include information related to his testimony at the public input hearing in Reading. He argues that his testimony pertaining to the approval of PAWC’s prior rate increases was not included in the Recommended Decision. Kazimer Exc. at 1.[[17]](#footnote-18)

In its Replies to Exceptions, PAWC argues that the Commission is not the forum in which to challenge the legality or the constitutionality of a duly enacted statute such as Act 11. Further, PAWC claims that Section 1311(c) of the Code reflects the legislative judgment that it is fair, reasonable and non-discriminatory to allocate a portion of wastewater revenue requirement to the combined water and wastewater customer base of a utility which furnishes water and wastewater service. R. Exc. at 7-8.

In response to Mr. Kazimer’s second objection, PAWC argues that the increases approved at the conclusion of the Company’s base rate cases in 2001, 2003, 2007, 2009, and 2011 have no bearing on the reasonableness of PAWC’s claims in this case or the Settlement. In addition, PAWC argues, the increases in revenue requirements since 2001 reflect the Company’s need to invest capital to replace and rehabilitate aging infrastructure, to respond to increasingly stringent environmental and drinking water standards, and to help address the problems created by troubled and non-viable water systems in the state. Moreover, PAWC asserts that the details and supporting data for the requested increase in revenue are adequately set forth in the Settlement. R. Exc.

at 9-12.

With regard to the first objection, we agree with PAWC that the Commission is without the authority to entertain Mr. Kazimer’s objections to the Code. Administrative agencies are creatures of the legislature and have only those powers which have been conferred by statute. *Western Pennsylvania Water Company v. Pa. PUC*, 471 Pa. 347, 370 A.2d 337, 339-340 (1977). Further, the Commonwealth Court has made clear that an administrative agency does not have power to determine the constitutionality of a statute it is charged to implement. [*Cutler v. State Civil Service Comm'n (Office of Admin.),* 924 A.2d 706, 716-17 (Pa. Cmwlth. 2007)](https://a.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2012270104&pubNum=162&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)#co_pp_sp_162_716). Here, Mr. Kazimer is objecting to the legality and the constitutionality of Section 1311(c) of the Code and the Commission is not permitted to entertain this challenge.

Furthermore, to the extent that Mr. Kazimer is also objecting to the application of Section 1311(c) and the ALJs’ determination that it is in the public interest to allocate a portion of the wastewater requirement to the combined water and wastewater customer base, we shall deny the Exception. As the Commission has previously acknowledged, one benefit of Section 1311(c) is that the costs of necessary upgrades to wastewater systems to maintain safe and reliable service, which can be substantial on a stand-alone basis, can be spread among the common customer base of the water and wastewater utilities.[[18]](#footnote-19)

Here, the ALJs acknowledged that, during the public input hearings, many customers disputed that it was in the public interest to combine the water and wastewater customer base to help pay for the wastewater service. However, the ALJs gave weight to the active party participants who supported the Settlement and asserted that it is in the public interest to pass moderate increases to water-only customers for the greater public good of reasonable wastewater rates and wastewater improvements. R.D. at 43.

Upon review of the record, we find that the ALJs properly concluded that it is in the public interest to allow the combination of the water and wastewater customer base under Section 1311(c). We agree that the Settlement avoids significant wastewater increases scheduled for January 1, 2014, while allowing for moderate increases in water rates.[[19]](#footnote-20)

 In addition, we find that Mr. Kazimer’s second objection, claiming the ALJs did not address his testimony pertaining to prior approved rate increases, to be without merit. As an initial matter, Mr. Kazimer introduced an exhibit during his testimony titled “PAWC Rate Case History” which was admitted into the record. Tr. at 393; Kazimer Exh. 1. This Exhibit was also referenced in the Recommended Decision. R.D. at 16. Furthermore, the Exhibit is identical to the chart attached to Mr. Kazimer’s Exceptions upon which he based his calculations of prior rate increases. Thus, we find no basis in the record or in the Recommended Decision which suggests the ALJs disregarded Mr. Kazimer’s testimony. Furthermore, Mr. Kazimer’s objection is essentially a statement of dissatisfaction with the ALJs’ Recommended Decision. We are of the opinion that the ALJs correctly determined that PAWC has sustained its burden of proof in demonstrating that the increase in rates as proposed in the Settlement is warranted. Accordingly, we shall deny Mr. Kazimer’s Exceptions.

**E. Additional Consideration**

 During the public input hearings, Amity Township Manager Charles Lyon questioned PAWC’s apparent practice of requiring the payment of public fire hydrant fees and the filing of indemnification documents when there is a use of the hydrants. Tr. at 356-358; R.D. at 44. The ALJs concluded that these issues were beyond the scope of the Settlement and did not appear to be a service or safety issue that required immediate attention. R.D. at 44.Because the record is incomplete on this issue, the ALJs recommended that a formal complaint form be sent to Amity Township in order for the Township to formally pursue its concerns in a separate proceeding if it chooses to do so. *Id.* We agree and will direct the Commission’s Secretary’s Bureau to mail a formal complaint form to Amity Township.

1. **Conclusion**

We have reviewed the record as developed in this proceeding, including the ALJs’ Recommended Decision and the Exceptions filed thereto. Initially, the Company requested an overall revenue increase of $58.6 million, or 10.1%. Thereafter, the Company, I&E, OCA, OSBA, CEO and PAWLUG submitted a Settlement for the Commission’s approval. The ALJs recommended that the Commission adopt the Settlement, which would result in the Company receiving a stipulated increase in annual revenues of $26 million, or 4.5%. The Settlement would produce approximately $604.6 million in total annual combined water and wastewater revenue as shown in Appendix C, Schedule A, column 8 of the Settlement. The ALJs further recommended that the Company be authorized to file the Tariff Supplement for water service attached to the Settlement as Appendix A and the Original Tariff for wastewater service attached to the Settlement as Appendix B to become effective on January 1, 2014.

Based on our review, evaluation and analysis of the record evidence, we find that the Settlement is in the public interest. Consequently, we shall adopt the ALJs’ recommendations, to the extent consistent with this Opinion and Order, and the resulting allowable revenue increase is $26 million, or 4.5%, increase in revenues. The Exceptions of PWSA will be granted, in part, and denied, in part, and the Exceptions of Mr. Kazimer will be denied, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by the Pittsburgh Water and Sewer Authority on November 18, 2013, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are denied, in part, and granted, in part.

2. That the Exceptions filed by William B. Kazimer on November 18, 2013, to the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep are denied.

 3. That the Recommended Decision of Administrative Law Judges Angela T. Jones and Darlene D. Heep, issued on November 8, 2013, is adopted, as modified, to the extent consistent with this Opinion and Order.

4. That Pennsylvania-American Water Company shall not place into effect the rates, rules, and regulations contained in Supplement No. 279 to Tariff Water – Pa. P.U.C. No. 4 and Original Tariff Wastewater Pa. P.U.C. No. 15 as filed on April 30, 2013, the same having been found to be unjust, unreasonable, and therefore, unlawful.

5. That the rates, terms and conditions contained in the Joint Settlement Petition filed by Pennsylvania-American Water Company, the Bureau of Investigation & Enforcement , the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission on Economic Opportunity, and the Pennsylvania American Water Large Users Group on October 18, 2013, is approved.

6. That Pennsylvania-American Water Company is hereby authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations for water service consistent with Appendix A of the Joint Settlement Petition filed by Pennsylvania-American Water Company, the Bureau of Investigation & Enforcement , the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission on Economic Opportunity, and the Pennsylvania American Water Large Users Group on October 18, 2013, that become effective upon less than statutory notice on January 1, 2014, and are designed to produce total annual operating revenue not to exceed $588,251,723.

7. That Pennsylvania-American Water Company is hereby authorized to file tariffs, tariff supplements or tariff revisions containing rates, rules and regulations for wastewater service, consistent with Appendix B the Joint Settlement Petition filed by Pennsylvania-American Water Company, the Bureau of Investigation & Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Commission on Economic Opportunity, and the Pennsylvania American Water Large Users Group on October 18, 2013, that become effective upon less than statutory notice on January 1, 2014, and are designed to produce total annual operating revenue not to exceed $16,324,282.

8. That, upon acceptance of the appropriate compliance filing, the investigation at Docket No. R-2013-2355276 shall be marked closed.

9. That the Formal Complaint filed at Docket No. C-2013-2362470, by the Office of Consumer Advocate, is dismissed.

 10. That the Formal Complaint, filed at Docket No. C-2013-2364641, by the Office of Small Business Advocate is dismissed.

 11. That the Formal Complaint, filed at Docket No. C-2013-2364664, by Brian L. Casper is dismissed.

 12. That the Formal Complaint, filed at Docket No. C-2013-2364692, by Dawn B. Spielvogel is dismissed.

 13. That the Formal Complaint, filed at Docket No. C-2013-2364773, by Robert Redinger is dismissed.

 14. That the Formal Complaint, filed at Docket No. C-2013-2366095, by Rita Sherman is dismissed.

 15. That the Formal Complaint, filed at Docket No. C-2013-2367036, by Guy & Nedra Visconti is dismissed.

 16. That the Formal Complaint, filed at Docket No. C-2013-2367041, by Russell Vankoughnet is dismissed.

 17. That the Formal Complaint, filed at Docket No. C-2013-2369063, by Doris Miller is dismissed.

 18. That the Formal Complaint, filed at Docket No. C-2013-2369095, by Jon & Dorothy Pichelman is dismissed.

 19. That the Formal Complaint, filed at Docket No. C-2013-2369464, by Jane Neufeld is dismissed.

 20. That the Formal Complaint, filed at Docket No. C-2013-2369925, by Georgia L. Dicko is dismissed.

 21. That the Formal Complaint, filed at Docket No. C-2013-2370649 by Carly J. Dunn, is dismissed.

 22. That the Formal Complaint, filed at Docket No. C-2013-2372396, by William B. Kazimer is dismissed.

 23. That the Formal Complaint, filed at Docket No. C-2013-2366239, by S. Stockton Alloway is dismissed.

 24. That the Formal Complaint, filed at Docket No. C-2013-2372641, by Thad Shirey is dismissed.

 25. That the Formal Complaint filed at Docket No. C-2013-2379466 by Paul Trizonis is dismissed.

 26. That the Secretary’s Bureau shall mail a Formal Complaint form to the Amity Township Board of Supervisors:

 Attention: Mr. Charles Lyon, Township Manager

 Amity Township Municipal Offices

 2004 Weavertown Road

 Douglassville, PA 19518

 27. That the Secretary’s Bureau shall mark the following Dockets closed: No. C‑2013-2362470; No. C-2013-2364641; No. C-2013-2364664; No. C-2013-2364692; No. C‑2013-2364773; No. C-2013-2366095; No. C-2013-2367036; No. C-2013-2367041; No. C‑2013-2369063; No. C-2013-2369095; No. C-2013-2369464; No. C‑2013-2369925; No. C-2013-2370649; No. C-2013-2372396; No. C-2013-2366239; No. C‑2013-2372641; and No. C-2013-2379466.

 BY THE COMMISSION,

 Rosemary Chiavetta

 Secretary

(SEAL)

ORDER ADOPTED: December 19, 2013

ORDER ENTERED: December 19, 2013

1. Mr. Kazimer’s Exceptions did not contain a Certificate of Service. Therefore, on November 19, 2013, the Commission’s Secretary’s Bureau forwarded a copy Mr. Kazimer’s Exceptions to the Parties of record and extended the time for filing Replies to Exceptions to November 27, 2013. [↑](#footnote-ref-2)
2. For a full and complete history, please refer to the Recommended Decision at 1‑7. [↑](#footnote-ref-3)
3. On July 9, 2013, the Pennsylvania American Water Large Users Group (PAWLUG) filed a Petition to Intervene, which was unopposed. PAWLUG requested active participant status in the proceeding. [↑](#footnote-ref-4)
4. For a more detailed discussion of the public input hearings, see pages 9-19 of the Recommended Decision. [↑](#footnote-ref-5)
5. Thom Welby, Representative Flynn’s Chief of Staff, also testified that PAWC currently offers subscriptions for maintenance contracts on work outside of customer homes. According to Mr. Welby, only three percent of the Company’s customer base subscribes to the service and expanding this base would be preferable to raising revenue through a rate increase. Tr. at 274-275. [↑](#footnote-ref-6)
6. Although the Joint Petitioners refer to the rates for the wastewater service in Appendix B as an “Original Tariff,” the Parties have modified the wastewater tariff as originally filed with the Commission on April 30, 2013. [↑](#footnote-ref-7)
7. “As a result of settlements in previous proceedings, PAWC already is prohibited from requesting an increase in base rates prior to March 31, 2016, for its wastewater operations in Claysville (Docket No. R-2010-2166210), Coatesville (Docket No. R-2010-2166212), and Northeast (Docket No. R-2010-2166214), except under extraordinary circumstances.” Settlement at 7. [↑](#footnote-ref-8)
8. “Subparagraphs (1)-(8) provide a general description of the water rate structure and water rate design incorporated in the Settlement Rates. While every effort has been made to ensure that the description is accurate, if any inconsistency exists between such description and the rates set forth in Appendix A to the Joint Settlement, the latter shall take precedence.” Settlement at 12. [↑](#footnote-ref-9)
9. “If any inconsistency exists between the information provided in subparagraphs (1)-(7) and the rates set forth in Appendix B to the [Settlement], the latter shall take precedence.” Settlement at 13. [↑](#footnote-ref-10)
10. “As explained in paragraph 8.c., *supra*, under the terms of the [Settlement], the scheduled January 1, 2014 increase in the rates of all customers of the Coatesville, Claysville and Northeast wastewater operations will not occur.” Settlement at 13. [↑](#footnote-ref-11)
11. Relevant to this proceeding, Act 11 of 2012 made two substantive changes to Chapter 13 of the Code at Sections 1311(c) and (e). Specifically, these sections now state:

§ 1311.  Valuation of and return on the property of a public utility.

….

(c)  *Segregation of property.* --When any public utility furnishes more than one of the different types of utility service, the commission shall segregate the property used and useful in furnishing each type of such service, and shall not consider the property of such public utility as a unit in determining the value of the rate base of such public utility for the purpose of fixing base rates. **A utility that provides water and wastewater service shall be exempt from this subsection upon petition of a utility to combine water and wastewater revenue requirements. The commission when setting base rates, after notice and an opportunity to be heard, may allocate a portion of the wastewater revenue requirement to the combined water and wastewater customer base if in the public interest.**

….

**(e)  *Definition.* --As used in this section, the term "utility that provides both water and wastewater service" shall include separate companies that individually provide water or wastewater service so long as the companies are wholly owned by a common parent company.**

66 Pa. C.S. § 1311(c) and (e) (emphasis added to show changes made through Act 11 of 2012). [↑](#footnote-ref-12)
12. The total unrecovered wastewater cost of service which will be transferred to the water cost of service under the Settlement is $5,410,115. This transfer represents less than 1% of the total proposed water revenue of $588,251,723. Settlement, Appendix C, Schedule 1, and Appendix G. [↑](#footnote-ref-13)
13. “We find the non-opposition of PWSA *compelling*. PWSA is allocated costs of the wastewater service as part of the rate increase that it is knowingly not opposing. This revelation alone is evidence that an industrial customer of PAWC that receives only water service from the Company finds the resolution to pay a portion of the wastewater service *palatable* considering the totality of the resolution for this proceeding through the Joint Settlement.” *Id.* (emphasis added). [↑](#footnote-ref-14)
14. “Palatable” is defined as: “1: agreeable to the palate or taste : savory;
2: agreeable to the mind : acceptable.” Webster’s Seventh New Collegiate Dictionary 606 (1963). [↑](#footnote-ref-15)
15. We acknowledge that the format of Mr. Kazimer’s Exceptions does not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusion of law to which exception is taken, and cite to the relevant pages of the Recommended Decision. Nevertheless, particularly because Mr. Kazimer is appearing *pro se*, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code
§ 1.2(a), in order to secure a just, speedy, and inexpensive determination of this matter. [↑](#footnote-ref-16)
16. Although not entirely clear from the Exceptions, it appears that Mr. Kazimer is also challenging the application of Section 1311(c) and the conclusions of the ALJs that it is in the public interest to require water-only customers to pay for part of the wastewater service supplied to others. [↑](#footnote-ref-17)
17. In his Exceptions, Mr. Kazimer states that the Commission granted an average increase in rates of 57% in years 2001, 2003, 2007, 2009 and 2011 and asks: “too generous or not generous enough?” *Id.* [↑](#footnote-ref-18)
18. *Petition of York Water Company for Authorization to Present a Combined Filing for a General Rate Increase Under 66 Pa. C.S. § 1308(d) Covering Both its Water and Wastewater Revenue Requirements Pursuant to 66 Pa. C.S. § 1311(c)*, Docket No.

P-2012-2340409 (Order entered February 28, 2013) at 3. [↑](#footnote-ref-19)
19. For example, the average residential increase in water rates for Zone 1 PAWC customers with 5/8 inch meters is expected to be 5.58%. *See* B. Terms and Conditions of the Settlement, *supra.* [↑](#footnote-ref-20)